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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,514	09/10/2003	Frank Tuccio	1016-013P/JAB	3616
22831 7590 05/11/2007 SCHWEITZER CORNMAN GROSS & BONDELL LLP 292 MADISON AVENUE - 19th FLOOR NEW YORK, NY 10017			EXAMINER MEHRPOUR, NAGHMEH	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/659,514

Applicant(s)

TUCCIO, FRANK

Examiner

Naghmeh Mehrpour

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-2, 4, 6-9, 11, 13,** are rejected under 35 U.S.C. 102(e) as being anticipated by Ovard (US Publication 2002/0090958).

Regarding **claims 1, 7**, Ovard teaches an apparatus for the remote monitoring of audio signals, comprising:

a portable transponder to transmit an identification signal, the portable transponder powered by a polling signal (0005, 0042); and

a fixed receiver for detecting an audio signal present in a monitored region and determining an identity of the audio signal detected, for transmitting the polling signal to the portable transponder, for determining an identity of the portable receiver from the

identification signal when the receiver is present in the monitored region, and for associating the identity of the receiver with the identity of the audio signal detected over a dwell time of the transponder in the monitored region (0055, 0059).

Regarding **claims 2, 9**, Ovard inherently teaches an apparatus/system wherein the transponder is a transponder carried by an individual (0003).

Regarding **claim 4**, Ovard an apparatus of claim 1, wherein the fixed receiver includes means for storing the association between the identities of the receiver and audio signal (0071, 0072).

Regarding **claim 6**, Ovard teaches a method for the remote monitoring of audio signals, comprising the steps of:

monitoring a designated region for the presence of an audio signal the transponder powered by a polling signal (0005, 0042);

processing an audio signal to determine its identity (0071, 0072);

monitoring the region for the presence of a transponder (;

receiving an identification signal from the transponder, the transponder transmitting the identification signal in response to receiving the polling signal (0005, 0006);

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identifying the transponder and its dwell time within the region and the identity of the audio signal, and the dwell time in the region (0048); and

generating a record correlating the transponder, its dwell time, and the identity of the audio signal (0071).

Regarding **claim 8**, Ovard teaches an apparatus wherein at least the means for detecting an audio signal and determining an identity is at a fixed location (0037-0038).

Regarding **claim 11**, Ovard fails to teach an apparatus of claim 8, further including means for storing the record at the fixed location (0071).

Regarding **claim 13**, Ovard teaches an apparatus of claim 7 comprising means associated with the means for determining the identity of the transponder for causing the transponder to emit an identification signal only when in the monitored region (0037, 0038).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 3, 5, 10, 12,** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ovard (US Publication 2002/0090958) in view of Peiffer et al. (US publication 2004/0210922 A1).

Regarding **claims 3, 10,** Ovard does not mention an apparatus/system wherein the fixed receiver includes a microphone circuit for detecting the audio signal. However, Peiffer teaches an apparatus/system wherein the fixed receiver includes a microphone circuit for detecting the audio signal (0048). Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the above teaching of Peiffer with Ovard, in order to process received digital audio signals, transmitted through a wide variety of media, to ensure accurate recognition.

Regarding **claims 5, 12,** Ovard fails to teach an apparatus wherein the audio signal is the audio portion of a received radio or television broadcast. However, Peiffer teaches an apparatus wherein the audio signal is the audio portion of a received radio or television broadcast (0016). Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the above teaching of Peiffer with Ovard, in order to process received digital audio signals, transmitted through a wide variety of media, to ensure accurate recognition.

Response to Arguments

4. Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. **Any responses to this action should be mailed to:**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naghmeh Mehrpour whose telephone number is 5571-272-791313. The examiner can normally be reached on 8:00 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold be reached (571) 272-7905.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NM

May 3, 2007



NAGHMEH MEHRPO
PRIMARY EXAMINE.